IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 16535 of 2007(R)

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OS.185/2004 of MUNSIFF COURT, PARAVUR

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PETITIONER:

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PADMINI, W/O.LATE VASUDEVAN PILLAI,
JYOTHIS, THOTTUMUGAM, ALUVA.

BY ADV. SRI.S.B.PREMACHANDRA PRABHU
SRI.G.SREENIVASA PRABHU

RESPONDENTS:

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SIVARAMAN NAIR, S/O.KRISHNAN NAIR,
PANAPPILLY HOUSE, KADUNGALLUR VILLAGE,
PARAVUR TALUK.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.NO:184/2004 OF MUNSIFF COURT, PARAVUR DT.20.3.2004

EXT.P2: -DO- OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT IN O.S.NO:185/2004 DT. 21.7.2004

EXT.P3: -DO- OF THE COMMISSION REPORT AND SKETCH DT.24.3.2004 IN I.A.662/04 IN O.S.185/2003 -DO-

EXT.P4: -DO- OF THE I.A.NO:831/2004 IN O.S.185/2004 DT.6.4.2004 FILED BY THE DEFENDANT

EXT.P5: -DO- OF THE COMMISSION REPORT AND SKETCH DT.20.8.2004 IN I.A.NO:831/2004 IN O.S.185/2004 -DO-

EXT.P6: -DO- OF I.A.NO:1156/2005 IN O.S.185/2004 DT.24.6.2005 FILED BY THE DEFENDANT

jj /TRUE COPY/

P.A.TO JUDGE

**M.N.KRISHNAN, J.**

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**WP(C).No. 16535 OF 2007 R**

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**Dated this the 25th June, 2007.**

**JUDGMENT**

This writ petition is filed to set aside Ext.P11 order passed by the learned Munsiff in I.A.2436/06 in O.S.185/04. The case is one for declaration of a path way and it is claimed by the plaintiff as easement of necessity. It is resisted by the defendants. I am informed that two commissioners had visited the property thrice and they had submitted Exts.P3,P5 and P7 report before the court. The present petition para 3 in Ext.P9 there is a recital that as per the documents there is a path way of 20 links width adjacent to the plaintiff's property and therefore if it is found out the case of the plaintiff will be shown to be false. It is true that the learned Munsiff has not written a considered order though he stated that for the reasons stated herein the prayer is allowed. Unfortunately no reasons are stated. Of course, this is a belated application but it is not a new case because defendant had produced document along with the written statement. So, it is desirable that the commissioner inspects the property in the light of those documents and in case of necessity get the assistance of the surveyor and submit a detailed plan. Since Shri. Suresh Kumar has visited the property twice and

it is only desirable that he be appointed as the commissioner to submit fresh plan and report as requested by the defendants. I make it clear that the petition as well as the counter statement does not give the points to be noted by the Commissioner and therefore both the plaintiff and defendant are permitted to file work memo before the commissioner so that the commissioner can answer it precisely and clearly with the assistance of the Taluk Surveyor. Since there is laches on the part of the defendant to move for the remission at an early stage, I direct that irrespective of the result of the suit, the defendant is bound to bear the expenses of the commissioner as well as for the surveyor. Writ petition is disposed of accordingly.

**M.N.KRISHNAN**
**Judge**

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